

Central Administrative Tribunal
Jabalpur Bench

OA No.318/04

Filed this the 22nd day of June, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Shiv Prasad Chadhar
S/o Kamod Prasad Chadhar
Sevak Mail Delivery
R/o Post Rajaua
Distt. Sagar (MP)

Applicant.

(By advocate Shri S.K.Nagpal)

Versus

1. Union of India through
Secretary
Ministry of Communications
Department of Posts
Dak Bhavan, Sansad Marg
New Delhi.
2. Chief Post Master General
MP Circle, Bhopal.
3. Superintendent. Of Post offices
Sagar Division
Sagar.
4. Divisional Inspector (Posts)
South North Division
Sagar.

(By advocate Shri Om Namdeo)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:



- (i) Quash the impugned orders dated 25.2.02, 17/19.6.2002 and 28.4.2003 (Annexures A1, A2 & A3) respectively.
- (ii) Direct the respondents to reinstate the applicant in service with all consequential benefits.
- (iii) Hold that the action of the respondents in not enhancing the amount of compensation as ex-gratia for put off duty period beyond 90 days in accordance with section 9(3)(i) of EDA Conduct and Service Rule 1964 is arbitrary and illegal.

2. The brief facts of the case are that the applicant who was appointed as ED Delivery Agent in Rajaua (Sagar Cantt.) on 26.4.93 was put off duty vide order dated 27.12.96 for the reason that a departmental enquiry was contemplated against him. He was issued a charge sheet dated 28.9.97 (Annexure A5) alleging that he had not paid four money orders to the actual payees and had misappropriated the same. The applicant denied the charges. By order dated Shri R.P.Yadav was appointed as Enquiry Officer and by order dated 3.3.98 Shri R.R.Jatav CIDO, Sagar was appointed as presenting officer. Thereafter, there were frequent changes in the enquiry officers as well as presenting officers. Shri K.K.Dixit who completed the enquiry and submitted his report on 23.1.2002 did not find the charges against the applicant as proved. Shri R.R.Jatav, Sub Divisional Inspector, Sagar, who was presenting officer from 3.3.98 to 9.2.2001 assumed the role of disciplinary authority and under his letter dated 6.2.02 (Annexure A12) sent a copy of the enquiry report to the applicant with his note of dissent on the enquiry report and the applicant was asked to submit his representation within 15 days. The applicant submitted his representation on 25.2.02. However, respondent No.4 passed the impugned order dated 27.2.02 (Annexure A1) by which the applicant was removed from service. He submitted an appeal dated 18.3.2002 which was rejected vide order dated 17/19.6.2002 (Annexure A2). The applicant submitted a revision petition dated 23.7.02, which was rejected vide order dated 28.4.2003 (Annexure A3). Hence this OA is filed.



3. Heard learned counsel for both parties. Learned counsel for applicant argued that vide order dated 24.2.98/3.3.98 issued by respondent No.4, Shri R.R.Jatav, C.I.D.O. Sagar, was appointed as presenting officer and he was the presenting officer during the period from 3.3.98 to 9.2.2001 and by virtue of his appointment to the post of Sub Divisional inspector, Sagar, he assumed the role of disciplinary authority and under his letter dated 6.2.02 (Annexure A12) sent a copy of the enquiry report to the applicant with his dissenting note, against which the applicant had submitted his representation, but without considering the representation, respondent No.4 had passed the impugned order of removal. Learned counsel of the applicant has drawn our attention towards 1999 (7) SCC 739 Yoginath D.Bagde Vs. State of Maharashtra and another, decided on September 16, 1999 and also towards 2005 (1) ATJ 147 MP High Court – Union of India and ors. Vs. Mohd.Naseem Siddique, decided on 5.8.2004, and argued that in the present case, the presenting officer himself became the disciplinary authority and he had played the role of a prosecutor as well as a judge, while it is apparently illegal. Hence the enquiry proceedings and the impugned orders passed by the respondents are liable to be quashed.

4. In reply, learned counsel for the respondents argued that on the request of the applicant, the earlier enquiry was changed and K.K.Dixit had finally conducted the enquiry and submitted the enquiry report on 23.1.2002 by which he had disproved the charges levelled against the applicant. The disciplinary authority i.e. SDI(P) North Sub Division, Sagar, however, had disagreed with the findings of the I.O. and forwarded the disagreement note vide memo dated 6.2.2002 to the applicant but the applicant did not submit any representation against it. Hence the disciplinary authority had passed the punishment order of removal. The appeal preferred by the applicant was considered and rejected. The documents demanded by the applicant during hearing of DE were not relevant to the case and



some of them were not made available due to their crossing the preservation period. It was not binding on the disciplinary authority to agree with the findings of the Inquiry Officer. In this case, the disagreement was communicated to the applicant vide Annexure R-1. The respondents have not committed any irregularity or illegality in conducting the departmental proceedings or in passing the impugned orders.

5. After hearing the learned counsel for the parties and perusing the records, we find that the applicant has mentioned in para 4.6 of the OA that by order dated 28.2.98 issued by respondent No.4, Sri R.P.Yadav was appointed as Enquiry officer and by order dated 24.2.98/3.3.98 issued by respondent No.4 Annexure A6 Shri R.R.Jatav, C.I.D.O., Sagar, was appointed as presenting officer. In para 4.12 of the OA he has clearly mentioned that Shri R.R.Jatav, C.I.D.O., Sagar, was appointed as presenting officer and he was the presenting officer during the period from 3.3.98 to 9.2.2001 and by virtue of his appointment to the post of Sub Divisional inspector, Sagar, he assumed the role of disciplinary authority and under his letter dated 6.2.02 (Annexure A12) sent a copy of the enquiry report to the applicant with his dissenting note, and the applicant was asked to submit his representation within 15 days. In para 4.13 of the OA, it is mentioned that the dissenting note dated 6.2.02 was received by the father of the applicant and against which the applicant has submitted his representation on 25.2.02, but the order of removal has been passed. We have perused the reply against the contentions mentioned in the aforesaid paras of the OA. In the reply, no comment is mentioned about para 4.1 to 4.7 of the OA and so no comments against paras 4.11 to 4.13. It apparently shows that the respondents have admitted that R.R.Jatav was appointed as presenting officer and during the enquiry proceedings, he has assumed the role of disciplinary authority and he has also prepared the dissenting note against the report of the enquiry officer, who did not find any charge



proved against the applicant and the very officer R.R.Jadav who was earlier presenting officer has passed the order of removal from service of the applicant. We have perused the aforesaid rulings cited on behalf of the applicant in which it is held that a person cannot be a prosecutor as well as a judge. The respondents have not denied this apparent illegality:

6. Considering all facts and circumstances of the case, we are of the considered opinion that the departmental enquiry proceedings and the impugned orders are apparently against rules and law. Hence the impugned orders dated 25.2.02; 17/19/6/2002 and 28.4.2003 (A-1, A2 & A3) are quashed and set aside and the matter is remitted back to the respondents for conducting a fresh enquiry according to rules.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

aa.

पूरांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अवेधित:-

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आदेशक श्री/श्रीमती/कु.....के कार्यालय
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के कार्यालय
- (4) माधवलाल, रीप.अ., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

उप-रजिस्ट्रार

R.K. Singh Pal
an namdeo
AN 7838

7/8/02
4-7-05